



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Rescinding Certification of the Final Environmental Impact Report (EIR) for the Lodi Shopping Center Project Located at 2640 West Kettleman Lane and Reset Public Hearing for March 11, 2009, at 6:30 p.m. to Consider the Appeals of Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify the Final Revised EIR

MEETING DATE: February 4, 2009


PREPARED BY City Attorney

RECOMMENDED ACTION: Adopt Resolution Rescinding Certification of the Final Environmental Impact Report (EIR) for the Lodi Shopping Center Project Located at 2640 West Kettleman Lane and Reset Public Hearing for March 11, 2009, at 6:30 p.m. to Consider the Appeals of Browman Development Company and Wal-Mart Stores, Inc. Regarding the Decision of the Planning Commission to Not Certify the Final Revised EIR.

BACKGROUND INFORMATION: The City Council received a Notice to Cure an alleged Brown Act violation arising out of its public hearing on the EIR on Dec 10, 2008. At its closed session on January 13, 2009, the City Council requested that staff set this matter to decertify the EIR and reset the public hearing, as an expedient to avoid litigation, and not a concession of a Brown Act violation. Staff recommends that the Council set the public hearing for a Special Meeting at Hutchins Street Square, Charlene Powers-Lange Theater, 125 S. Hutchins Street, Lodi on March 11, 2009.

FUNDING: Not applicable.

FISCAL IMPACT: Avoided litigation costs


D. Stephen Schwabauer
City Attorney

APPROVED: 
Blair King, City Manager

RESOLUTION NO. 2009-15

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF LODI RESCINDING RESOLUTION NO. 2008-238,
THEREBY RESCINDING THE CERTIFICATION OF THE
FINAL REVISED ENVIRONMENTAL IMPACT REPORT
(EIR-03-01) FOR THE LODI SHOPPING CENTER;
STATE CLEARINGHOUSE NO. 2003042113

WHEREAS, an application was filed by **Browman** Development Company for a commercial shopping center at 2640 West Kettleman Lane, more particularly described as Assessor's Parcel numbers 058-030-08 and 058-030-02 and a portion of 058-030-09; and

WHEREAS, the Community Development Director made a determination that the project may have a potentially significant impact on the environment and ordered the preparation of an Environmental Impact Report (EIR); and

WHEREAS, the Notice of Preparation (NOP) of the Draft EIR **was** prepared and distributed to reviewing agencies on April 14, 2003; and

WHEREAS, the Draft EIR (DEIR) was released on August 5, 2004, for circulation; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice, held a study session and public hearing on September 9, 2004. Public comments on the DEIR were taken at this hearing; and

WHEREAS, a Final EIR (FEIR) responding to all public comments on the DEIR submitted prior to the expiration of the comment period was prepared and released to the public and commenting agencies on November 22, 2004; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice, held a public hearing before said Commission on December 8, 2004; and

WHEREAS, the Planning Commission of the City of Lodi reviewed and certified the FEIR prepared for the project; and

WHEREAS, that certification and approval was appealed to the Lodi City Council; and

WHEREAS, the Lodi City Council, on appeal, reviewed and certified the FEIR prepared for the project (Resolution No. 2005-26, February 3, 2005); and

WHEREAS, the Lodi City Council rescinded the certification of the FEIR on May 3, 2006, pursuant to Superior Court Order of December 19, 2005, which order directed revisions to be made to the EIR: and

WHEREAS, in response to the Court Order, the City prepared a NOP of the Revisions to the EIR (REIR) and distributed it to reviewing agencies on September 25, 2006; and

WHEREAS, the Draft Revisions to the EIR (DREIR) was released and circulated on October 17, 2007, for public comment and review; and

WHEREAS, the Planning Commission of the City of Lodi, after ten (10) days published notice, held a study session and public hearing on November 14, 2007. Public comments on the DREIR were received at this hearing; and

WHEREAS, a Final Revisions to the **EIR** (FREIR), which includes the DREIR as revised and responses to all public comments on the DREIR submitted prior to the expiration of the comment period, was prepared and released to the public and commenting agencies on August 26, 2008; and

WHEREAS, on October 8, 2008, the Planning Commission of the City of Lodi held a hearing on the adequacy of the FREIR, and the Planning Commission declined to certify the FREIR; and

WHEREAS, Wal-Mart Stores, Inc. and **Browman** Development Company have each filed timely appeals of the Planning Commission's denial of the FREIR to the City Council; and

WHEREAS, the City Council of the City of Lodi, after ten (10) days published notice, held a public hearing on December 10, 2008, to consider the appeal of the Planning Commission's decision to certify the FREIR; and

WHEREAS, the Lodi City Council did on December 10, 2008, certify the FREIR (EIR-03-01) relating to the Lodi Shopping Center project as adequate; and

WHEREAS, the City Council received a Notice to Cure an alleged Brown Act violation arising out of its public hearing on the FREIR on December 10, 2008, and at its closed session on January 13, 2009, the City Council requested that staff set this matter to decertify the FREIR and reset the public hearing, as an expedient to avoid litigation, and not a concession of a Brown Act violation; and

WHEREAS, staff recommends that the Council set the public hearing for a Special Meeting at Hutchins Street Square, Charlene Powers-Lange Theater, 125 South Hutchins Street, Lodi on March 11, 2009.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, AND ORDERED as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference; and
2. For the reason stated above, the Lodi City Council hereby rescinds Resolution No. 2008-238, thereby rescinding certification of the FREIR for the Lodi Shopping Center Project located at 2640 West Kettleman Lane; and

3. That a Public Hearing be set for a special meeting on March 11, 2009, at Hutchins Street Square, Charlene Powers-Lange Theater, 125 South Hutchins Street, Lodi, California, to consider the appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Final Revised EIR.

Dated: February 4, 2009

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I hereby certify that Resolution No. 2009-15 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 4, 2009, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katzakian, Mounce,
and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk

2009-15



***Please immediately confirm receipt
of this fax by calling 333-6702***

CITY OF LODI
P. O. BOX 3006
LODI, CALIFORNIA 95241-1910

ADVERTISING INSTRUCTIONS

SUBJECT PUBLIC HEARING TO CONSIDER APPEALS OF BROWMAN
DEVELOPMENT COMPANY AND WAL-MART STORES, INC.
REGARDING THE DECISION OF THE PLANNING COMMISSION TO NOT
CERTIFY THE FINAL REVISED ENVIRONMENTAL IMPACT REPORT
REGARDING THE LODI SHOPPING CENTER PROJECT LOCATED AT
2640 WEST KETTLEMAN LANE

PUBLISH DATE: SATURDAY, FEBRUARY 7, 2009

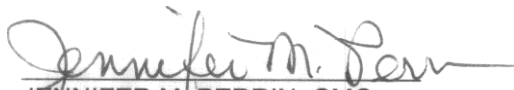
LEGAL AD

TEAR SHEETS WANTED: One (1) please

SEND AFFIDAVIT AND BILL TO: RANDI JOHL, CITY CLERK
City of Lodi
P.O. Box 3006
Lodi, CA 95241-1910

DATED: THURSDAY, FEBRUARY 5, 2009

ORDERED BY: RANDI JOHL
CITY CLERK


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

Verify Appearance of this Legal in the Newspaper – Copy to File

LNS Faxed to the Sentinel at 369-1084 at 2:50pm (time) on 2/5/09 (date) 2 (pages)
Phoned to confirm receipt of all pages at _____ (time) JPM CF MB (initials)



DECLARATION OF POSTING

**PUBLIC HEARING TO CONSIDER APPEALS OF BROWMAN DEVELOPMENT
COMPANY AND WAL-MART STORES, INC. REGARDING THE DECISION OF
THE PLANNING COMMISSION TO NOT CERTIFY THE FINAL REVISED
ENVIRONMENTAL IMPACT REPORT REGARDING THE LODI SHOPPING CENTER
PROJECT LOCATED AT 2640 WEST KETTLEMAN LANE**

On Friday, February 6, 2009, in the City of Lodi, San Joaquin County, California, a Notice of Public Hearing to consider appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Final Revised Environmental Impact Report regarding the Lodi Shopping Center project located at 2640 West Kettleman Lane (attached and marked as Exhibit A) was posted at the following locations:

Lodi Public Library
Lodi City Clerk's Office
Lodi City Hall Lobby
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 6, 2009, at Lodi, California.

ORDERED BY:

**RANDI JOHL
CITY CLERK**


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



DECLARATION OF MAILING

**PUBLIC HEARING TO CONSIDER APPEALS OF BROWMAN DEVELOPMENT COMPANY
AND WAL-MART STORES, INC. REGARDING THE DECISION OF THE PLANNING
COMMISSION TO NOT CERTIFY THE FINAL REVISED ENVIRONMENTAL IMPACT
REPORT REGARDING THE LODI SHOPPING CENTER PROJECT LOCATED AT
2640 WEST KETTLEMAN LANE**

On Friday, February 6, 2009, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a Notice of Public Hearing to consider appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Final Revised Environmental Impact Report regarding the Lodi Shopping Center project located at 2640 West Kettleman Lane, attached hereto marked Exhibit **A**. The mailing list for said matter is attached hereto marked Exhibit **B**.


There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 6, 2009, at Lodi, California,

ORDERED BY:

**RANDI JOHL
CITY CLERK, CITY OF LODI**


JENNIFER M. PERRIN, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK



CITY OF LODI

Hutchins Street Square
125 S. Hutchins St., Lodi

NOTICE OF PUBLIC HEARING

Date: March 11, 2009

Time: 6:30 p.m.

For information regarding this notice please contact:

Randi Johl

City Clerk

Telephone: (209) 333-6702

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on **Wednesday, March 11, 2009**, at the hour of 6:30 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a public hearing at Hutchins Street Square, 125 South Hutchins Street, Lodi, to consider the following item:

- a) **Appeals of Browman Development Company and Wal-Mart Stores, Inc. regarding the decision of the Planning Commission to not certify the Final Revised Environmental Impact Report regarding the Lodi Shopping Center project located at 2640 West Kettleman Lane.**

Information regarding this item may be obtained in the Community Development Department, 221 West Pine Street, Lodi, (209) 333-6711. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk, City Hall, 221 West Pine Street, 2nd Floor, Lodi, 95240, at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the close of the public hearing.

By Order of the Lodi City Council:

Randi Johl
City Clerk

Dated: February 4, 2009

Approved as to form:

D. Stephen Schwabauer
City Attorney

Lodi Shopping Center **REJR300** ft Mailing list for City Council Meeting March 11,2009

EXHIBIT B

02741007	SACRAMENTO KETTLEMAN LLC ETAL	1954 MT DIABLO BLVD #A	WALNUT CREEK	CA	94596
02742001	GEWEKE FAMILY PTP	PO BOX 1420	LODI	CA	95241
02742003	IN N OUT BURGERS CORP	13502 HAMBURGER LN	BALDWIN PARK	CA	91706
02742013	GEWEKE VIII LP ETAL	PO BOX 1210	LODI	CA	95241
05803003	VAN RUITEN RANCH LTD	PO BOX 520	WOODBIDGE	CA	95258
05803009	REICHMUTH, THOMAS E	2541 LYNCH WAY	LODI	CA	95242
05803011	BDC LODI III LP	100 SWAN WAY SUITE 206	OAKLAND	CA	94621
05803012	WAL MART REAL EST BUSINESS TRU	MAIL STOP 0555	BENTONVILLE	AR	72716
05814001	TESORO SIERRA PROPERTIES LLC	300 CONCORD PLAZA DR	SAN ANTONIO	TX	78216
05814004	FRAME, DEAN K & SHARON L TR	212 RUTLEDGE DR	LODI	CA	95242
05814006	HERRMANN, CHARLENE K TR ETAL	1200 GLENHURST DR	LODI	CA	95240
05814007	DEL RIO, SANTIAGO M & RAMONA T	15315 N HOERL RD	LODI	CA	95240
05814011	GREVER, ZANE M & PATSY R TR	1432 PARK ST	LODI	CA	95242
05814012	PETERSON, M BILL	PO BOX 473	LOCKEFORD	CA	95237
05814014	PETERSON, RUTH SUSAN	PO BOX 331	SUTTER CREEK	CA	95685
05814042	BARBER VALLEJO PROPERTIES LP	2595 AUTO MALL PKWY	FAIRFIELD	CA	94533
05814044	FIRST LODI PLAZA ASSOCIATES	1556 PARKSIDE DR	WALNUT CREEK	CA	94596
02705021	GEWEKE FAMILY LTD PTP	2475 MAGGIO CIR	LODI	CA	95240

Kari Chadwick - *sent e-notification to these individuals*

Distribution List Name: Lodi Shopping Center EIR redo

Members:

Alex Aliferis	aaliferis@aheworld.org
Alexis Pelosi	APelosi@sheppardmullin.com
Amy Kaida	akaida@tusd.net
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Susan Williams	Susan.Williams@doucet-ca.com
Travis Beckett	t.beckett@gmx.com
Ty Murphy	Tymurphy001@yahoo.com

EXHIBIT B

**APPEALS REGARDING DECISION OF THE PLANNING COMMISSION TO
NOT CERTIFY THE LODI SHOPPING CENTER EIR**

Mailing List

* Judy V. Davidoff, Esq.
Sheppard Mullin Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111

* Andrea K. ieisy, Esq.
Remy Thomas Moose & Manley LLP
455 Capitol Mall, Suite 210
Sacramento, CA 95814

* Mailed 2/17/09 - jmt